Joseph F. Busa
Deputy Municipal Attorney

Jessica B. Willoughby
Assistant Municipal Attorney

Zachary A. Schwartz
Assistant Municipal Attorney

Email: courtdocs@muni.org

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

Damen Aguila, Mario Lanza Dyer, and Jamie Scarborough,	)	
Plaintiffs,	)	
vs.	)	
Municipality of Anchorage,	)	
Defendant.	)	
	)	Case No. 3AN-25-04570CI

OPPOSITION TO PLAINTIFFS' MOTION FOR EXPEDITED CONSIDERATION OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Defendant Municipality of Anchorage ("Municipality") opposes Plaintiffs' Motion for Expedited Consideration of their Motion for Temporary Restraining Order and Preliminary Injunction. Plaintiffs seek to stop the Municipality from abating an encampment in the center of Anchorage that has become a significant public health and safety hazard. They filed suit at the close of business yesterday, together with an extraordinary request that

MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

this Court issue an injunction in 24 hours without even allowing the Municipality an opportunity to respond. Granting this request would cause significant prejudice to the Municipality, which has been working toward this abatement for weeks and has a duty to safeguard its neighborhoods and community members. Making a hasty ruling also carries a high risk of error, because Plaintiffs' evidence is deficient; and moreover, their claimed justifications for this urgency do not stand up to scrutiny. For these reasons, which are explained in more detail below, the Municipality requests that the Court deny this request for an immediate *ex parte* ruling on multiple grounds.

I. Relevant Background

Plaintiffs assert they reside in an encampment on a right-of-way along the east side of Arctic Boulevard north of West Fireweed Lane. The Municipality's civil code prohibits such encampments on public property and provides a mechanism for the Municipality to abate the camps with appropriate notice. On January 31, 2025, the Municipality posted notices in the encampment at issue informing occupants that the area would be abated on Monday, February 10, ten days later.[1] Plaintiffs were, according to their briefing and affidavits, aware of the notices at the time they were posted.[2]

Nearly a week later, on February 6, 2025—at approximately 4:00 pm—Plaintiffs filed suit in Anchorage Superior Court and served the Municipality with a copy at approximately 4:20 pm. They requested that the Court immediately issue an injunction halting the abatement by the close of business today, Friday, February 7, 2025, which would allow the

MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

[1] Plaintiffs' Mot. for Temporary Restraining Order Exhibits 3-4 (posted notices).
[2] Plaintiffs' Exhibit 1 ¶19 (Dyer Affidavit); Exhibit 2 ¶19; Exhibits 3-4 (posted notices).

Court less than 24 hours to consider their filing. Moreover, Plaintiffs have asked the Court to take this action *ex parte*, without even allowing the Municipality an opportunity to be heard.

II. Plaintiffs' Request for 24-Hour *Ex Parte* Decision Is Not Justified

A. A Hasty *Ex Parte* Ruling Would Cause Significant Prejudice to the Municipality without Allowing a Meaningful Opportunity to Be Heard.

As an initial matter, a decision on this extraordinary timeline would prejudice the Municipality by interfering with its ability to efficiently and effectively enforce its laws for the protection of the community. The encampment is less than 400 feet from a neighborhood elementary school,[3] next to a sidewalk children use to walk to and from school. AMC 15.20.020B.15.b. establishes that encampments "proximate to protected land uses," including schools, are to be prioritized in abatement. Based on publicly-available court and law enforcement records, all Plaintiffs appear to have extensive criminal records; and as noted below, one of the Plaintiffs is a registered sex offender who has failed to update his physical address with law enforcement, in apparent criminal violation of his duty to do so.[4] The encampment's occupants have long demonstrated a disregard for the surrounding community, generating over 8,500 pounds of garbage since November 6, 2024, including over 1,000 pounds that slid down the hill into the sidewalk in November 2024.[5] The

[3] Plaintiffs' Exhibit 6 measures the distance as 583 feet from the encampment to the front door of North Star Elementary. AMC 15.20.020B.15b.ii.(B) directs that "The separation distance shall be measured from the lot line of the protected land use to the nearest illegal camp structure." Regardless of whether the distance is 382 feet (as measured from the lot line) or 583 feet, there can be no real dispute that it is in proximity to the school.

[4] *See infra* pp. 4-5 and n.9.

[5] Defendant's Exhibit A (e-mail from Miller to Braniff).

MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

Municipality has a duty to safeguard its neighborhoods and schools, and it needs to be able to abate encampments when they become significant health and safety hazards.

Canceling or postponing an abatement is not costless. Posting and preparing a site for abatement requires significant effort and investment from multiple municipal departments, including the Anchorage Police Department and Parks and Recreation's Healthy Spaces team.[6] The Municipality has limited resources—both human and financial—and having to re-do the process at a later date will have an impact on public health (by pulling Healthy Spaces staff from other camp cleanup efforts) and public safety (by pulling officers in an understaffed department off other safety efforts).

B. Plaintiffs' Evidentiary Record Is Unreliable and Likely to Lead to an Erroneous Ruling.

Issuing a hasty ruling on these issues is likely to result in error because Plaintiffs' evidence is unreliable. Even Plaintiffs' most basic allegations about their status—the ones that form the very foundation of the suit—lack evidentiary support.

For example, the Plaintiffs' Motions seek relief on behalf of all three Plaintiffs based on factual allegations about their status and experience living unhoused, but attaches testimony from only two of the three Plaintiffs, Mr. Dyer and Mr. Scarborough. There is *no testimony* and *no evidentiary record whatsoever* supporting the Motions' assertions about

MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

[6] *See* Municipality of Anchorage, Camp Abatement Process, *available at* https://addressing-homelessness-muniorg.hub.arcgis.com/pages/camp-abatement ("Camp abatement and cleanup is a partnership between the public and departments of the Municipality, including the Anchorage Police Department , Anchorage Health Department, the Department of Law, and the Parks and Recreation Department.") (last visited February 7, 2025).

the third Plaintiff, Mr. Aguila. Issuing any ruling affecting Mr. Aguila would be improper because the evidence does not even establish that Mr. Aguila resides in the encampment.

Even for the Plaintiffs who did provide affidavits, the evidence is problematic. The Plaintiffs claim that all "Plaintiffs have lived at the present location for at least eight months[,]"[7] citing to Mr. Dyer's and Mr. Scarborough's affidavits—but only Mr. Scarborough's affidavit supports that representation. Mr. Dyer's affidavit states that he "can't remember" how long he has been at the encampment.[8] In fact, publicly-available information from official government sources *directly contradicts* Plaintiffs' assertion that Mr. Dyer has resided at the encampment for eight months.

According to the State of Alaska Department of Public Safety Sex Offender/Child Kidnapper Registry, Mr. Dyer—who is a "registered sex offender/Child Kidnapper"—listed his address as the Brother Francis Shelter on July 12, 2024, less than seven months ago.[9] Either Mr. Dyer lives at Brother Francis Shelter and not the encampment, or he is in criminal violation of his duty to update his registration[10] (and residing near a school without allowing educators or families in the neighborhood to know of his presence). Either way, the evidence

[7] Plaintiffs' Memo. in Support of Plaintiffs' Mot. for Temporary Restraining Order and Preliminary Injunction, p. 16.

[8] Plaintiffs' Exhibit 2, ¶8.

[9] State of Alaska Department of Public Safety Sex Offender/Child Kidnapper Registry Search, *available by searching* https://sor.dps.alaska.gov/Registry/Search (last visited February 6, 2025). Mr. Dyer's status is appropriate for judicial notice under Alaska Rule of Evidence 201(b)(2), as it is "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."

[10] Under AS 12.63.010, registered sex offenders are required to update their address "by the next working day" following a change in residence, and per guidance from DPS, "Offenders without a fixed residence address must provide a description of their physical location. Any changes to the physical location must be reported by the next working day," *available at* https://sor.dps.alaska.gov/ (last visited February 7, 2025).

MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

in the record regarding his status and residence history does not support the representations made in Plaintiffs' briefs.

These evidentiary issues are real and foundational. They emphasize that issuing a decision on this record, on this timeline, would carry significant risks of error.

C. Plaintiffs' Claimed Justifications for Urgency Are Misplaced.

Even setting aside the above issues, Plaintiffs' Motion for Expedited Consideration fails because it does not contain credible justification for this extraordinary 24-hour timeline. Plaintiffs claim this urgency is merited for three reasons: (1) Plaintiffs' possessions will be destroyed if the encampment is abated; (2) they have nowhere else they can go without committing criminal trespass; and (3) there is only one business day remaining before the Municipality abates the encampment at issue on Monday, February 10, so the decision must be rendered immediately. None of these reasons stands up to analysis.

First, Plaintiffs will not have their belongings destroyed if the abatement proceeds. Because Plaintiffs have initiated a legal challenge to the abatement, the Municipality will not dispose of Plaintiffs' property if it remains in the encampment after the ten-day notice period has elapsed. Instead, it will place Plaintiffs' belongings into storage for the pendency of this litigation, as contemplated in AMC 15.20.020B.15.f.ii.,[11] so that Plaintiffs can

MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

[11] This provision, strictly speaking, applies to administrative appeals of abatement actions; but the Municipality considers the present suit similar enough that it will honor the storage provisions provided in AMC 15.20.020B.15.f.ii. (providing that the Municipality will "store [personal property] until either the appeal is withdrawn, settled, or a decision is issued."), and store all items as detailed in AMC 15.20.020B.15.c.

retrieve them at a later date. This alleged harm—the destruction of property—is therefore not a valid basis for expedited consideration.

Second, Plaintiffs' assertion that "there is nowhere in Anchorage that the Municipality will allow them to shelter themselves without committing the crime of trespass" is based on a misreading of Anchorage Municipal Code.[12] The Municipality has not threatened Plaintiffs with criminal penalties; it posted the zone for abatement under Title 15 of Anchorage Municipal Code (Environmental Protection), Chapter 20—the chapter of the *civil code* that addresses public nuisances.[13] Plaintiffs are not being abated from *all* municipal owned land, just this one zone as noticed. Additionally, criminal trespass is addressed in the Penal Code at AMC 8.45.010. The Penal Code does not criminalize sheltering on public property,[14] and Plaintiff's perception that they face criminal penalties merely for camping is unfounded.

Third, Plaintiffs' claimed need for a 24-hour expedited *ex parte* decision is in large part the result of their own conduct. Plaintiffs—who are represented by sophisticated counsel with extensive expertise in this area—have offered no explanation for why they waited *nearly a week* to seek relief after the abatement notice was posted on January 31. Even filing one or two days sooner would have allowed the Municipality a meaningful opportunity to respond, and the Court a meaningful opportunity to consider the issues. Instead, Plaintiffs

[12] Plaintiffs' Mot. for Expedited Consideration, p. 2.

[13] Plaintiffs' Exhibits 3-4.

[14] Remaining on public property becomes a crime only in circumstances when the public property is "not open to the public[,]" after the person "has been requested to leave by someone with the apparent authority to do so[,]" where the area has "a prominently posted notice against trespass or use[,]" or "when the person has had other actual or constructive notice that the property is not open to the person." AMC 8.45.010A.3-4.

MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

rushed into court at the eleventh hour, insisting that the Court abruptly halt the Municipality's abatement process without even allowing the Municipality a chance to be heard. Plaintiffs' own relative lack of urgency in seeking relief undermines their claim that 24-hour expedited consideration is justified.[15]

III. Conclusion

Prejudicing the Municipality in these ways, without even allowing a meaningful opportunity for the Municipality to be heard on the underlying motion, is not merited based on Plaintiffs' weak arguments for expedited consideration.

Because Plaintiffs have not provided adequate justification to require expedited consideration of their underlying motion and complaint, nor have they provided adequate time for the Municipality to respond, the Municipality respectfully requests that this Court deny Plaintiffs' Motion for Expedited Consideration.

Respectfully submitted this 7th day of February, 2025.

EVA R. GARDNER
Municipal Attorney

By: */s Joseph Busa*
Joseph F. Busa
Deputy Municipal Attorney
Alaska Bar No. 2005030

Jessica B. Willoughby
Assistant Municipal Attorney
Alaska Bar No. 1305018

Zachary A. Schwartz
Assistant Municipal Attorney
Alaska Bar No. 2405053

[15] Alaska R. Civ. P. 77(g)(3).

MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550

The Municipality consents to service via e-mail to the above e-mail addresses provided copies are also sent to courtdocs@muni.org.

Certificate of Service
I certify that on 02/07/2025 I caused to be e-mailed a true and correct copy of the foregoing to:

Ruth Botstein, rbotstein@acluak.org
Eric Glatt, eric.glatt@outlook.com
Helen Malley, HMalley@acluak.org
ACLU of Alaska Foundation
Counsel for Plaintiffs

/s Marie Stafford
Marie Stafford, Legal Secretary
Municipal Attorney's Office

MUNICIPALITY OF ANCHORAGE

OFFICE OF THE MUNICIPAL ATTORNEY

P.O. Box 196650
Anchorage, Alaska
99519-6650

Telephone: 343-4545
Facsimile: 343-4550